

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 November 2024

Public Authority: Hertford Heath Parish Council
Address: PO Box 399
Hertford
SG13 9LA

Decision (including any steps ordered)

1. The complainant submitted an information request to Hertford Heath Parish Council (the council) for correspondence and findings in relation to a site assessment report and process.
2. The Commissioner's decision is that the council was correct in applying regulation 12(4)(b) (manifestly unreasonable) of the EIR to the request. However, he finds that the public interest in maintaining the exception does not outweigh the public interest in disclosure. He also finds that the council did not comply with the requirements of regulation 5(2) (time for compliance), regulation 14 (refusal to disclose information) and regulation 11(4) (time for review) of the EIR.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on regulation 12(4)b.
 - In relation to the Aecom site assessment report, conduct fresh searches to see if any third parties, working on the council's behalf, hold the first draft of the report.

4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. In May 2013, the council decided to create a Neighbourhood Plan. A Neighbourhood Plan gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. A steering group was set up, to work alongside a Neighbourhood Planning consultant.
6. As part of the East Hertfordshire District Council District Plan, the council is required to build 10% of its housing stock. After a call for sites and a site selection process, the Haileybury site was chosen, and the council developed their Neighbourhood Plan with this as the chosen site.

Request and response

7. On 28 November 2023, the complainant wrote to the council and requested information in the following terms:

"The Applicant wishes to be provided with a copy of the following material from 24th May 2023:

a copy of all the documents provided to Aecom by the Parish Council, Steering Group, [redacted] (Chairman of Steering Group), Gov Resources Ltd and Locality to assess as part of their site assessment review for the Hertford Heath Parish Council in respect of the Neighbourhood Plan;

a copy of the instructions provided to Aecom by the Council, Gov Resources/Steering group, [redacted] and Locality in respect of the Site Assessment Process, including a copy of all communications and correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memos) between any representative of the Council and Aecom; and

a copy of all communications and correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memos) between any representative of the Council and any other third party such as GovResources Ltd, Steering Group, [redacted] and Locality in respect of the Site Assessment Process including East Herts District Council.

a copy of any site assessment report or findings from Aecom together with any correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memo) between any representative of the Council and any other third party such as Gov Resources Ltd, Steering Group, [redacted] & Locality in respect of the Site Assessment Process.

a copy of all communications between The Parish Council, Gov Resources/Steering group, [redacted] in respect of the Site Assessment Process from 23rd May 2023 to the date the FOI is completed, including a copy of all communications and correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memos) between any representative of the Council including but not limited to Aecom, Locality, GovResources Ltd, Steering Group and [redacted] (chairman of the Steering Group).

a Copy of the completed Site Assessment report/Guidance from Aecom which has been confirmed is in the Parish Council/Steering Group/[redacted]/GovResources Ltd possession."

8. On 7 February 2024, the council provided a response in which it stated that the request was similar to one from May 2023, and that it had previously provided the complainant with a copy of the Site Assessment report.
9. Upon receiving this response, the complainant submitted an internal review request on 21 February 2024. After contact by the Commissioner, the council provided its internal review response on 24 April 2024, in which the council maintained that it had nothing further to disclose and that in relation to one aspect of the internal review, it was unable to comply with it due to the burden imposed.

Scope of the case

10. The complainant contacted the Commissioner on 10 April 2024 to complain about the way their request for information had been handled.

11. As part of his investigation, the Commissioner contacted the council to enquire whether it had indicated that it was applying regulation 12(4)(b) of the EIR in its internal review response.
12. The council confirmed that it was, and that the exception applied to all of the request. The Commissioner advised the council to inform the complainant of the application of this exception to the request.
13. During his investigation, the Commissioner has been provided with evidence which shows that the first draft of the Aecom report was deliberately deleted by a third party, before the complainant's request was submitted. Therefore, obtaining a copy of this first draft remains a significant concern of the complainant.
14. The Commissioner has also seen evidence that this first draft would have been sent to the council as part of the production process. However, the council maintains that it did not receive the "working draft" that was deleted.
15. However, for the scope of this case, the Commissioner is to determine if the council has correctly relied upon regulation 12(4)(b) of the EIR to refuse the request.

Reasons for decision

Is the requested information environmental?

16. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
17. In this case, the Commissioner considers that the requested information falls under 2(1)(c) of the EIR.

Regulation 12(4)(b)-manifestly unreasonable requests

18. Regulation 12(4)b) of the EIR states that a public authority may refuse to disclose the information to the extent that the request for information is unreasonable.
19. The Commissioner has published guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged the exception is subject to a public interest test.
20. In this case, the council considers that circumstance 1) is applicable.
21. The Commissioner's guidance on manifestly unreasonable requests clarifies that the test for a vexatious request under the EIR is essentially the same as that under FOIA; the ICO's guidance on section 14(1)² defines vexatious as the:
- "...manifestly unjustified, inappropriate or improper use of a formal procedure."

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

22. As that guidance notes, four broad themes provide a useful structure to start analysing whether a request is vexatious (although they are not a checklist nor are they exhaustive). They are:
- the burden on the public authority and its staff;
 - the motive of the requester;
 - the value or serious purpose of the request;
 - and any harassment or distress of and to staff.
23. A useful starting point is to assess the value or serious purpose of the request, before considering the impact handling the request would have.

Value/purpose of the request/motive of the requester

24. The complainant confirms that they are seeking this information in order to gain a full understanding of “the decision-making process and quality assurance measures involved in the creation of the AECOM report”.
25. The complainant further explains that they want to understand “the circumstances and reasoning behind the changes to the first version report, as it may hold environmental significance for the site selection of the Neighbourhood Plan to ensure transparency of the decision-making process.”
26. The council explains that the complainant has a private interest in the request, as during a call for sites, the complainant submitted a piece of land for potential development, however “during public consultation, the community favoured an alternative site.”

Burden/number of requests/duration

27. The council feels that it has been “inundated” with questions, FOI requests and legal challenges in relation to this subject matter, from the complainant.
28. In evidencing this, the council provided the Commissioner with a spreadsheet which showed that since October 2020, it has received 137 pieces of correspondence from the complainant and their representatives, in relation to this subject.
29. The council further explains that this list of correspondence does not include interactions from earlier stages.
30. The council further argues that the volume of requests and correspondence is increasingly disproportionate to the capacity of its staff, and the situation is “unstainable in the long term.”

Harassment/distress to staff

31. The council argues that its staff is being subjected to “undue pressure and harassment” as the complainant “frequently presents information” that the council finds inaccurate, and this puts it in a position of constantly needing to counter these claims.
32. The council feels that this constant challenging of information constitutes manifestly unreasonable behaviour and can sometimes be “perceived as bullying.”

The Commissioner’s position

33. The key question to consider, as objectively as possible, is whether the value and purpose of the request are enough to justify the impact of the request on the council.
34. The context and history of a request is often a major factor in determining whether it is vexatious.
35. The Commissioner is aware that there is a strong personal motive behind the request; nevertheless he does accept that there is a valid purpose to it.
36. However, he does not believe that this outweighs the cumulative burden of dealing with the volume of requests and correspondence that the council have had to deal with, on this subject matter.
37. Therefore, the Commissioner is satisfied that the request is manifestly unreasonable and so regulation 12(4)(b) of the EIR is engaged. The Commissioner will now go on to consider the public interest test.

Public interest test

38. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

Factors in favour of disclosure

39. The complainant argues that disclosure will help ensure that the council “upholds the principles of transparency and accountability in the Neighbourhood Plan development process.”
40. The complainant adds that “denying access” to the first version of the Aecom report “raises serious concerns about the council’s commitment to a fair and transparent site selection.”

41. The complainant further argues that residents have a “fundamental right to participate meaningfully in a planning process that directly affects their lives.”

Factors in favour of maintaining the exception

42. The council argues that complying with the request would “create an unjustified level of disruption for the local community.”
43. It further argues that it is in the public interest for the council to “continue its other essential functions without disruption.”
44. The council maintains that all completed reports by external agencies will be made public once reviewed by the council.

The balance of the public interest

45. The Commissioner recognises that there is a very personal motive behind the request, but he also accepts that there is a broad public interest in disclosing information that provides transparency around decisions made in respect of planning matters.
46. However, the Commissioner is also conscious of the impact placed on the council in responding to the request and subsequent correspondence, and whether it would be in the public interest to divert vital council resources.
47. He also considers that even if the council provide a response to the request, this might not be the last request the council receives from the complainant on this subject. The Commissioner is not convinced that this would bring an end to this matter.
48. Nevertheless, the Commissioner has been swayed by the compelling public interest in this case, in that the development of a Neighbourhood Plan can affect the people of its local community, and it is therefore important that this process be as transparent as it can be.
49. Based on these considerations, the Commissioner considers the public interest arguments on both sides to be evenly balanced. As the PIT under the EIR has a presumption in favour of disclosure, he therefore concludes that the public interest in favour of maintaining the exception is outweighed by the public interest in favour of disclosure.

Procedural matters

50. The council breached regulation 5(2) of the EIR because it failed to inform the complainant, within 20 working days, whether it held any information within the scope of their request.
51. The Commissioner finds that the council breached regulation 14 of the EIR, because its refusal notice did not cite the exception it came to rely on.
52. The council also breached regulation 11(4) of the EIR as it failed to carry out its internal review within 40 working days.

Right of appeal

53. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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